### Bill

/3

mkunkel

nnatzke

04/09/2009 04/09/2009

jfrantze

04/09/2009 \_\_\_

cduerst

04/09/2009

sbasford

04/10/2009

Received	l: 03/18/2009				Received By: mkunkel				
Wanted:	As time pern	nits			Identical to LRB:				
For: Tho	mas Nelson	(608) 266-2418			By/Representing	g: Ben Nerad			
This file	may be showr	n to any legislato	Drafter: mkunl	kel					
May Con	May Contact:								
Subject: Fin. Inst int. rates/loans					Extra Copies:	ARG			
Submit v	Submit via email: YES								
Requeste	r's email:	Rep.Nelsor	ı@legis.wis	consin.gov					
Carbon co	opy (CC:) to:								
Pre Topi	ic:								
No specif	ic pre topic gi	ven							
Topic:	***************************************		****						
Regulatio	n of tax refun	d anticipation lo	oans						
Instructi	ons:						***************************************		
See attach	ned								
Drafting	History:			NRMM1481-1					
Vers.	<u>Drafted</u>	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required		
/? /1	mkunkel 03/20/2009	jdyer 03/20/2009	mduchek 03/20/2009	9	cduerst 03/20/2009				
/2	mkunkel 04/01/2009	jdyer 04/01/2009	mduchek 04/01/2009	9	mbarman 04/01/2009				

FE Sent For: NONE

Bill

Received: 03/18/2009

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Thomas Nelson (608) 266-2418

By/Representing: Ben Nerad

This file may be shown to any legislator: NO

Drafter: mkunkel

May Contact:

Addl. Drafters:

Subject:

Fin. Inst. - int. rates/loans

Extra Copies:

**ARG** 

Submit via email: YES

Requester's email:

Rep.Nelson@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of tax refund anticipation loans

**Instructions:** 

See attached

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	<u>Required</u>
/? /1	mkunkel 03/20/2009	jdyer 03/20/2009	mduchek 03/20/200	9	cduerst 03/20/2009		
/2	mkunkel 04/01/2009	jdyer 04/01/2009	mduchek 04/01/200	9	mbarman 04/01/2009		
/3	mkunkel 04/09/2009	nnatzke 04/09/2009	jfrantze 04/09/200	9	cduerst 04/09/2009		

FE Sent For:

Bill

Received: 03/18/2009					Received By: mkunkel			
Wanted:	As time peri	mits	Identical to LRB:					
For: The	omas Nelson	(608) 266-241	By/Representing:	Ben Nerad				
This file	may be show	n to any legisla	itor: NO		Drafter: mkunke	1		
May Cor	ntact:				Addl. Drafters:			
Subject:	Fin. In	st int. rates/	loans		Extra Copies:	ARG		
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Bill

FE Sent For:

Received: 03/18/2009	Received By: mkunkel					
Wanted: As time permits	Identical to LRB:					
For: <b>Thomas Nelson</b> (608) 266-2418	By/Representing:	Ben Nerad				
This file may be shown to any legislator: <b>NO</b>	Drafter: mkunkel					
May Contact:	Addl. Drafters:					
Subject: Fin. Inst int. rates/loans	Extra Copies:	ARG				
Submit via email: YES						
Requester's email: Rep.Nelson@legis.wisconsin.gov						
Carbon copy (CC:) to:						
Pre Topic:						
No specific pre topic given						
Topic:						
Regulation of tax refund anticipation loans						
Instructions:						
See attached						
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/1 mkunkel jdyer mduchek	cduerst 03/20/2009					

Bill

FE Sent For:

Received: 03/18/2009	Received By: mkunkel				
Wanted: As time permits	Identical to LRB:  By/Representing: <b>Ben Nerad</b>				
For: Thomas Nelson (608) 266-2418					
This file may be shown to any legislator: <b>NO</b>	Drafter: mkunkel				
May Contact:	Addl. Drafters:				
Subject: Fin. Inst int. rates/loans	Extra Copies: ARG				
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Requester's email: Rep.Nelson@legis.wisconsin.gov	*				
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Pre Topic:					
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? mkunkel 130jld M III	4				

### Kunkel, Mark

From:

Kunkel, Mark

Sent:

Tuesday, March 17, 2009 3:08 PM

To:

Nerad, Ben

Subject: RALs: comparing Washington law to WCA

You asked whether the Wisconsin Consumer Act (WCA) has provisions comparable to certain provisions of the Washington state law on tax refund anticipation loan (RAL) facilitators. Here's what I found:

Por drobt #1. # ) wisions.

1. RCW 19.265.050 (1) prohibits a facilitator from "[m]srepresent[ing] a material factor or condition of a refund anticipation loan." The WCA does not include a general prohibition on making a misrepresentation about a consumer loan. The WCA does prohibit certain types of misrepresentations. See, e.g., s. 422.503 (1) (c), which prohibits a credit services organization from making untrue or misleading representations about their services.

Conclusion: I think it is necessary to create a prohibition comparable to RCW 19.265.050 (1).

2. RCW 19.265.050 (3) prohibits a facilitator from "[e]ngag[ing] in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a refund anticipation loan." The WCA imposes an obligation of good faith on transactions that are subject to the WCA, and defines "good faith" as "honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing." Section 421.108. The WCA also requires DFI to promulgate rules on what constitutes unconscionable conduct in consumer credit transactions and prohibiting such conduct. Section 426.108.

Conclusion: Because the WCA prohibits dishonesty and requires fair dealing, there is no need to create such requirements for RALs. As for fraudulent conduct, I think that fraud would be subject to a prohibition on misrepresentation (see item 1 above). Regarding unconscionablity, you could require DFI to promulgate rules that apply specifically to RALs, or you could be silent on the issue, as DFI could promulgate such rules under current law if it determined such rules are necessary. As for "unethical practice or conduct," I think the Washington law is too vague on this point and I would advise not creating a similar prohibition.

3. RCW 19.265.040 allows a borrower to rescind an RAL before the close of business on the next day of business, specifies the method of rescission, and prohibits a lender from charging a fee for rescission (except for an administrative fee for establishing a bank account to electronically receive a refund). The WCA does not generally allow for rescission of a consumer loan. The WCA does allow for cancellation of some transactions that are not relevant to RAL cancellation. See, e.g., s. 422.505 (2) (cancellation of a credit service contract).

Conclusion: It is necessary to create a right to rescind an RAL.

As we discussed yesterday, the Washington law contains the following provisions which do not have counterparts under Wisconsin law:

- a) requirement to promptly process an RAL application -- RCW 19.265.050 (2)
- b) prohibiting certain security interests -- RCW 19.265.050 (4) (note that the WCA has security interest requirements that are not relevant to RALs)
- c) charging a fee that exceeds the amount of a refund -- RCW 19.265.050 (5)
- d) requiring a minimum 10-point type for disclosures -- RCW 19.265.030 (1) (b) (intro.)
- e) requiring disclosure that RAL is a loan, not actual tax refund; disclosure of average refund time for returns mailed to IRS; disclosure that IRS does not guarantee paying full amount of RAL or specific refund date; disclosure of fee charge if RAL not approved, and disclosure of right to rescind. RCW 19.265.030 (1) (i), (iii) (B), (iv), (vii), and (viii).

ND - disclose: se: leceipt if getPAL (i.e cofund fees) 03/18/2009

### Kunkel, Mark

From:

Nerad, Ben

Sent:

Thursday, March 19, 2009 10:50 AM

To: Subject: Kunkel, Mark RE: Seattle

Yes, that is the code I was looking at including. Thanks.

From:

Kunkel, Mark

Sent:

Thursday, March 19, 2009 10:49 AM

To:

Nerad, Ben

Subject:

Seattle

Ben, I'm not sure which part of the Seattle code you want to include in the bill. Is it the following?

IF YOUR **REFUND ANTICIPATION** LOAN IS APPROVED, YOU WILL BE RESPONSIBLE TO PAY \$[insert itemized amount] IN FEES, INTEREST, AND OTHER CHARGES FOR THE LOAN, WHICH WE WILL AUTOMATICALLY DEDUCT. AFTER WE DEDUCT THESE FEES, INTEREST, AND OTHER CHARGES FROM YOUR LOAN, YOU WILL RECEIVE APPROXIMATELY \$ [insert amount].

Hereis a link to the rest of the code, in case you want a different provision: <a href="http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s2=tax+refund+anticipation&S3=&Sect4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=3&Sect6=HITOFF&f=G</a>



State of Misconsin 2009 - 2010 LEGISLATURE

(D-NO-15)

2009 BILL

3-20-09

LRB-2395/1 MDK:

jld

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Gen

AN ACT ...; relating to: the regulation of income tax refund anticipation loans.

Analysis by the Legislative Reference Bureau

Current law requires a creditor to make specified disclosures before a "refund anticipation loan" (RAL) is made to a customer. An RAL is defined as an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer's income tax refund. Current law defines "creditor" to include a merchant who regularly engages in arranging an RAL for a customer, as well as the merchant who makes the RAL. The disclosure requirements are enforced by the Department of Financial Institutions (DFI).

This bill creates additional requirements, also enforced by DFI, for a creditor who makes or arranges an RAL. In addition to the disclosures required under current law, the bill requires a creditor to disclose the the fee charged if an RAL is not approved. The bill also requires disclosure of the anticipated length of time for receipt of a tax refund by a customer who files a return by mail and who does not request an RAL. Current law requires a similar disclosure regarding a return filed electronically. The bill also requires a creditor to disclose that: 1) the Internal Revenue Service and Department of Revenue do not guarantee refunds; 2) an RAL is a loan and is not the customer's actual refund; and 3) a customer may rescind an RAL, as described below. Also, the creditor must also disclose how much of a refund a customer is expected to receive after charges and fees for the RAL are deducted. Under the bill, the foregoing disclosures, as well as the disclosures required under current law, must be in a type size no smaller than 10 point.

current law, must be in a type size no smaller than 10 point. The bill also allows a customer to rescind an RAL before the close of business on the next business day after the RAL is made. The bill provides that the only fee

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a creditor may charge a customer for rescinding an RAL is a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the customer's refund. The bill also prohibits a creditor from doing any of the following: 1) misrepresenting a material fact of condition of an RAL; 2) failing to process promptly an RAL application; 3) offering or arranging an RAL in which the amount of the loan, including charges and fees related to the loan or to tax preparation, exceed the customer's anticipated refund; and 4) taking or arranging a security interest in any property other than the customer's tax refund.

The bill provides that a creditor who violates the bill is liable to a customer in amount equal to the greater of: 1) twice the finance charge imposed for the RAL; or 2) the actual damages sustained by the customer due to the violation. The amount under the 1st component of the foregoing formula is subject to a minimum of \$100 and a maximum of \$1,000. Current law creates similar liablity for violations of the disclosures required under current law.

### The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 422.310 (1) (intro.) of the statutes is amended to read:

422.310 (1) (intro.) In addition to any other requirements under this subchapter, a creditor shall disclose all of the following in writing to a customer in type size no smaller than 10 point on a form that is signed by the customer before the customer enters into a refund anticipation loan:

History: 1993 a. 111. SECTION 2. 422.310 (1) (cm) of the statutes is created to read:

422.310 (1) (cm) The fee charged, if any, if the customer's refund anticipation loan is not approved.

SECTION 3. 422.310 (1) (f) of the statutes is amended to read:

422.310 (1) (f) The anticipated length of time within which the customer could reasonably expect to receive a tax refund if the customer does not request a refund anticipation loan and the income tax return is filed electronically and the customer does not request a refund anticipation loan.

14 SECTION 4. 422.310 (1) (fg) of the statutes is created to read:

1	422.310 (1) (fg) The anticipated length of time within which the customer could
2	reasonably expect to receive a tax refund if the customer does not request a refund
(3)	anticipation loan and the income tax return filed by mail.
4	SECTION 5. 422.310 (1) (fr) of the statutes is created to read:
5	422.310 (1) (fr) That internal revenue service and department of revenue do
(6)	not not guarantee that they will pay the full amount of an anticipated refund and do
$\overbrace{7}$	not guarantee a specific date that a refund will be deposited into the customer's
8	financial institution account or mailed to the customer.
9	SECTION 6. 422.310 (1) (gm) of the statutes is created to read:
10	422.310 (1) (gm) That a refund anticipation loan is a loan and is not the
(11)	customers actual income tax refund.
12	SECTION 7. 422.310 (1) (i) of the statutes is created to read:
13	422.310 (1) (i) The following statement: "If your refund anticipation loan is
(14)	approved, you will be responsible to pay creditor inserts amount disclosed under par.
15	(c) in charges and fees for the loan, which we will automatically deduct. After we
(16)	deduct these charges and fees, you will receive approximately creditor inserts
17	amount)."
18	SECTION 8. 422.310 (1) (j) of the statutes is created to read:
19	422.310 (1) (j) That the customer has the right to rescind the refund
20	anticipation loan transaction as provided in s. 422.423 (2).
21	SECTION 9. 422.417 (3m) of the statutes is created to read:
22	422.417 (3m) With respect to a refund anticipation loan, a creditor may not
23	take or arrange for taking a security interest in any property of the customer other
24	than the proceeds of the customer's tax refund and the account into which that tax
25	refund is deposited to secure payment of the loan.

BILL
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SECTION 10

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SECTION 10.	422.423 of the	e statutes is	created	to read:

- 422.423 Refund anticipation loans. (1) A creditor who makes or arranges a refund anticipation loan to or for a customer may not do any of the following:
  - (a) Misrepresent a material fact or condition of a refund anticipation loan.
- (b) Fail to process an application for a refund anticipation loan promptly after the customer applies for the loan.
- (c) Offer or arrange for a refund anticipation loan that, including any charges or fees related to the loan or tax preparation, exceeds the amount of the customer's anticipated tax refund.
- (2) A customer may rescind a refund anticipation loan, before the close of business on the next day of business after the loan is made, by either returning the original check issued for the loan or providing the amount of the loan in cash to the creditor who made or arranged for the loan. The creditor may not charge the customer any fee for rescinding the loan, except for a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the refund.
  - (3) A violation of this section is subject to s. 425.304.

### SECTION 11. Initial applicability.

(1) This act first applies to refund anticipation loans, as defined in section 421.301 (37m) of the statutes, for which applications are received on the effective date of this subsection.

### SECTION 12. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.

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(END)

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2395/1dn MDK:**\gamma**:...

Rep. Nelson:

Please review this bill to make sure that it achieves your intent. Note that I delayed the effective date by approximately months to give businesses subject to the bill some time to change their practices. Is that okay?

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

E-mail: mark.kunkel@legis.wisconsin.gov

## DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2395/1dn MDK:jld:md

March 20, 2009

Rep. Nelson:

Please review this bill to make sure that it achieves your intent. Note that I delayed the effective date by approximately three months to give businesses subject to the bill some time to change their practices. Is that okay?

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

 $E-mail: \ mark.kunkel@legis.wisconsin.gov$ 

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

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#### Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

quent change in the terms of the account which would increase or extend the contingent liability of the person, where the merchant was authorized to make unilateral changes from time to time under the original terms of the account, an explanation of such change must be given to the person in accordance with s. 422.415, Stats. Such notice shall conspicuously disclose that if the person wishes to terminate the guarantee with respect to future transactions, the person must notify the creditor in writing.

**History:** Cr. Register, June, 1973, No. 210, eff. 7–1–73; am., Register, October, 1980, No. 298, eff. 11–1–80.

**DFI-WCA 1.351 Customer liability; open-end credit.** In order to obligate a person for an obligation arising out of an open-end credit plan, the merchant must pursuant to s. 422.305, Stats., obtain the signature of that person on the writing evidencing the consumer credit transaction. Compliance with this rule requires that the customer to be held contractually liable sign one of the following:

- (1) An open—end credit agreement setting forth all of the terms of the open—end credit plan including the credit disclosures required by s. 422.301, Stats.,
- (2) A credit application which expressly states that each person signing the application will be obligated according to the terms of the open—end credit agreement referred to in sub. (1), provided the creditor mails or delivers to each customer who signs the application a copy of the open—end credit agreement before that customer makes any charges on the account, or
- (3) A transaction receipt which expressly states that each person signing the receipt will be obligated according to the terms of the open—end credit agreement referred to in sub. (1), provided the creditor has mailed or delivered a copy of the open—end credit agreement to that customer before that customer makes any charges on the account.

**History:** Cr. Register, June, 1973, No. 210, eff. 7–1–73; r. and reer., Register, October, 1980, No. 298, eff. 11–1–80.

DFI-WCA 1.352 Receipts; accounting; evidence of payment; release of any security interest. The creditor may satisfy an obligation to release any security interest under s. 422.306 (4), Stats., by either 1) recording the necessary instrument and forwarding the same to the customer or designee by mail or by return on the instrument or 2) by delivering the necessary instrument fully completed and executed to the customer's designee, but in no instance to the customer, for recording. The recording or filing fee may be treated as an official fee within the meaning of s. 421.301 (26), Stats. Where the transaction is secured by a lien on a motor vehicle and the title is not in the possession of the creditor, the creditor may satisfy the requirements of this subsection by mailing a completed release of lien to the customer together with an envelope addressed to the department of motor vehicles, bureau of vehicle registration, postage prepaid, and a letter of instruction advising the customer to forward the release and title to the department to obtain release of the secured party's inter-

**History:** Cr. Register, June, 1973, No. 210, eff. 7–1–73; corrections made under s. 13.93 (2m) (b) 5. and 7., Stats., Register, December, 1991, No. 432.

DFI-WCA 1.353 Refund anticipation loan; before the customer enters into a refund anticipation loan. "Before the customer enters into a refund anticipation loan" as used in s. 422.310 (1) (intro.), Stats., means prior to the customer being asked to sign an application containing a loan agreement or a loan agreement where there is no application for a refund anticipation loan.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

**DFI-WCA 1.354** Refund anticipation loan; reasonable length of time to expect refund. The anticipated length of time called for in s. 422.310 (1) (f), Stats., in which the customer

can reasonably expect to receive a tax refund shall be no more than 14 days.

History: Cr. Rogister, September, 1994, No. 465, eff. 10-1-94.

**DFI-WGA 1.355** Refund anticipation loan; estimated annual percentage rate. (1) For the purpose of s. 422.310 (1) (h), Stats., the requirement to disclose the estimated annual percentage rate shall be fulfilled by doing one of the following:

- (a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated amount of the refund and the length of time within which it can reasonably be expected the tax refund will be received as a result of an electronically filed tax return as determined under s. DFI-WCA 1.354.
- (b) Distributing a chart titled "representative range of loan amounts" with headings for: total loan amount, amount financed, finance charge, estimated payment period, and annual percentage rate. The representative loan amounts shall be in \$300 increments starting with \$300 and ending with \$3,000 and represent the anticipated refund amount.
- (2) The disclosures shall be made in accordance with 12 CFR 226.18.
- (3) For the purpose of calculating the annual percentage rate at the time the loan is actually made, the disclosure shall be based upon the actual amount of the loan and the length of time within which it can reasonably be expected the tax refund will be received as a result of the electronically filed tax return as determined under s. DFI-WCA 1.354.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

**DFI-WCA 1.356** Refund anticipation loan; charges or fees for electronically filing an income tax return. For the purposes of s. 422.310 (1) (b) and (2), Stats., charges or fees assessed by a creditor, including a loan arranger, for checking tax return information, data entry of the tax return information, and costs of transmitting the tax return by computer modem are included in the charges and fees for electronically filing an income tax return.

History: Cr. Register, September, 1994, No. 465, eff. 10-1-94.

DFI-WCA 1.36 Receipts; accounting; evidence of payment; customer inquiries. Should a customer or an authorized representative question in writing any bill or statement of a merchant, or of an assignee where notice of assignment pursuant to s. 422.409, Stats., has been given, such merchant or assignee shall in accordance with s. 422.306, Stats., respond specifically to the issue or dispute raised by the customer within 30 days of receipt of such inquiry, or, in the case of transactions evidenced by open-end credit plans not later than 2 complete billing cycles (in no event more than 90 days) from receipt of such inquiry. Inquiries made on an instrument of payment of [or] the returnable portion of the billing statement need not be acknowledged if the creditor conspicuously discloses this requirement on the statement or other disclosure to customers regarding the correction of billing errors. A reasonably disputed debt under s. 427.104 (1) (f), Stats., shall include an indebtedness questioned under this rule from the date of notice to the merchant to the date the merchant's response is made.

**History:** Cr. Register, June, 1973, No. 210, eff. 7–1–73; am., Register, October, 1980, No. 298, eff. 11–1–80.

**DFI-WCA 1.361 Assignment of earnings prohibited; revocation.** In any case where a merchant takes an assignment of earnings subject to s. 422.404, Stats., for payment or as security for payment of an obligation the assignment shall contain on its face a statement in substantially the following language: "THE CUSTOMER MAY TERMINATE THIS ASSIGNMENT AT ANY TIME WITHOUT PENALTY."

History: Cr. Register, June, 1973, No. 210, eff. 7-1-73.

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Register, July, 2007, No. 619

### Kunkel, Mark

From:

Nerad, Ben

Sent:

Tuesday, March 31, 2009 3:49 PM

To:

Kunkel, Mark

Subject:

RE: RAL Time Chart

I must have confused the payment period with the apr/finance charges/total fees. I would like the bill to require both charts the HR Block sheet includes -- Table 1 and Table 2.

----Original Message----

From: Kunkel, Mark

Sent: Tuesday, March 31, 2009 3:46 PM

To: Nerad, Ben

Subject: RE: RAL Time Chart

The DFI rule (DFI-WCA 1.355 (1)(b)) says that the chart must include the estimated payment period. That sounds kind of like the timeline mentioned in the H&R Block handout, so I'm having some difficulty figuring out what you want to include that isn't covered by the reference to estimated time payment. Can you elaborate?

Unfortunately, I have to leave the office for the day right now, but if you email back or leave a voicemail, I still think I can get this into editing and you might have it by the end of the day tomorrow.

#### -- Mark

----Original Message----

From: Nerad, Ben

Sent: Tuesday, March 31, 2009 3:22 PM

To: Kunkel, Mark

Subject: RAL Time Chart

Mark -- here is the chart from HR Block, as discussed.

----Original Message----

From: Network Scanning

Sent: Tuesday, March 31, 2009 2:27 PM

To: Nerad, Ben

Subject:

This E-mail was sent from "RNPB7E5CD" (MP 5500/LD255).

Scan Date: 03.31.2009 14:27:07 (-0500)

Queries to: networkscanning@legis.wisconsin.gov

an (Instant RAL)	es Total Fees d Bank Check	Includes \$20 Check Processing Fee*		80.74	86.59	92.43	98.28	107.63				
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Instant Refund Anticipation Loan (Instant RAL)	Finance Charge	Includes \$24.95 Instant RAL Surcharge	Not Available	30.79	36.64	42.48	48.33	57.68		Not Available	1.1.7.1.7.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1	
Insta	APR**			%007	<b>%911</b>	%68	%9/_	64%				
Classic RAL)	Total Fees Bank Check	Includes \$20 Cheek Processing Fee*	53.17	55.31	89'09	66.04	71.41	66.62	82.14	92.87	103.60	157.23
cipation Loan (Classic RAL)	Total Fees Emerald Card		33.17	35.31	40.68	46.04	51.41	59.99	62.14	72.87	83.60	137.23
Classic Refund Anti	Finance Charge		3.22	5.36	10.73	16.09	21.46	30.04	32,19	42.92	53.65	107.28
Class	APR**		36%	36%	36%	36%	36%	36%	36%	36%	36%	36%
3	Refund Account Fee*		29.95	29.95	29.95	29.95	29.95	29.95	29.95	29.95	29.95	29.95
	Sample Loan Amount		300	200	1000	1500	2000	2800	3000	4000	5000	6666

<sup>+</sup> If you apply for an instant RAL and are approved by the lending bank for less than the full refund amount, the remaining amount, if approved, will be issued as a Classic RAL. If that occurs, the Classic RAL Annual Percentage Rate (APR) will be disclosed to you through the Truth in Lending Disclosure Statement. \* These fees are not included in the APR calculation. \*\* APR is an estimate.

# Table 2: Timeline

				<del></del>	· · · · ·	Filanda (	**************************************	
4	Tax Preparation Fee Required Up Front?	Yes	Yes	Yes	Yes	No	No	No
LAUR 4. LIMETHE	Timing*	6-8 weeks**	5-7 weeks**	15-22 days**	8-15 days**	8-15 days***	1-2 days***	Same Day***
LAUR 4.	Filing/Money Options	Paper Return IRS Mailed Check	Paper Return IRS Direct Deposit to Your Bank Account	E-Filed Return IRS Mailed Check	E-Filed Return IRS Direct Deposit to Your Bank Account	E-Filed Return Refund Anticipation Check Check or Emerald Card	E-Filed Return Refund Anticipation Loan Check or Emerald Card	E-Filed Return Instant Refund Anticipation Loan Check or Emerald Card

deposit refunds in bank accounts in as few as 5.7 days. A tax refund eleck mailed to you would take several days longer. The table above does not reflect this process since tax preparers do not know in advance which returns will be selected by the IRS for it. \*\*IRS does not guarantee a specific date that refunds will be received. \*\*\*H&R Block and HSBC do not guarantee a specific date for availability of money. \*These are approximate times based on www.irs.gov and other available information. The IRS plans to process some tax returns using a faster process that can

# Table 3: IRS Refunds and Classic RAL

# Amounts

36% This illustrates a typical Refund Anticipation Loan on an H&R Block Emerald Card. Starting with the amount of your refund, the bank will deduct tax preparer fees, the bank Refund Account Fee and the bank Finance Charge. You \$3,000.00 - 32.19 \$2,767.86 - 170.00 - 29.95 will receive the remainder as your Classic RAL proceeds. Minus Bank Loan Refund Account Fee Amount Received on Emerald Card Minus Bank Loan Finance Charge Annual Percentage Rate (APR) Minus Tax Preparer Fees Anticipated Refund





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### State of Misconsin 2009 - 2010 LEGISLATURE

( - NOTE)

2009 BILL

LRB-2395/1 MDK:jld:md



(gen cat)

AN ACT to amend 422.310 (1) (intro.) and 422.310 (1) (f); and to create 422.310

(1) (cm), 422.310 (1) (fg), 422.310 (1) (fr), 422.310 (1) (gm), 422.310 (1) (i),

422.310 (1)/(j), 422.417 (3m) and 422.423 of the statutes; relating to: the

regulation of income tax refund anticipation loans.

### Analysis by the Legislative Reference Bureau

Current law requires a creditor to make specified disclosures before a "refund anticipation loan" (RAL) is made to a customer. An RAL is defined as an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer's income tax refund. Current law defines "creditor" to include a merchant who regularly engages in arranging an RAL for a customer, as well as the merchant who makes the RAL. The disclosure requirements are enforced by the Department of Financial Institutions (DFI).

This bill creates additional requirements, also enforced by DFI, for a creditor who makes or arranges an RAL. In addition to the disclosures required under current law, the bill requires a creditor to disclose the fee charged if an RAL is not approved. The bill also requires disclosure of the anticipated length of time for receipt of a tax refund by a customer who files a return by mail and who does not request an RAL. Current law requires a similar disclosure regarding a return filed electronically. The bill also requires a creditor to disclose that: 1) the Internal Revenue Service and the Department of Revenue do not guarantee refunds; 2) an RAL is a loan and is not the customer's actual refund; and 3) a customer may rescind an RAL, as described below. Also, the creditor must also disclose how much of a



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LRB-2395/1
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refund a customer is expected to receive after charges and fees for the RAL are deducted. Under the bill, the foregoing disclosures, as well as the disclosures required under current law, must be in a type size no smaller than 10 point.

The bill also allows a customer to rescind an RAL before the close of business on the next business day after the RAL is made. The bill provides that the only fee a creditor may charge a customer for rescinding an RAL is a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the customer's refund. The bill also prohibits a creditor from doing any of the following: 1) misrepresenting a material fact of condition of an RAL; 2) failing to process promptly an RAL application; 3) offering or arranging an RAL in which the amount of the loan, including charges and fees related to the loan or to tax preparation, exceed the customer's anticipated refund; and 4) taking or arranging a security interest in any property other than the customer's tax refund.

The bill provides that a creditor who violates the bill is liable to a customer in amount equal to the greater of: 1) twice the finance charge imposed for the RAL; or 2) the actual damages sustained by the customer due to the violation. The amount under the first component of the foregoing formula is subject to a minimum of \$100 and a maximum of \$1,000. Current law creates similar liability for violations of the disclosures required under current law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 422.310 (1) (intro.) of the statutes is amended to read:

422.310 (1) (intro.) In addition to any other requirements under this subchapter, a creditor shall disclose all of the following in writing to a customer in type size no smaller than 10 point on a form that is signed by the customer before the customer enters into a refund anticipation loan:

SECTION 2. 422.310 (1) (cm) of the statutes is created to read:

422.310 (1) (cm) The fee charged, if any, if the customer's refund anticipation loan is not approved.

**SECTION 3.** 422.310 (1) (f) of the statutes is amended to read:

422.310 (1) (f) The anticipated length of time within which the customer could reasonably expect to receive a tax refund if the customer does not request a refund

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LRB-2395/1 MDK:jld:md SECTION 3

***************************************	anticipation loan and the income tax return is filed electronically and the customer
2	does not request a refund anticipation loan.
3	SECTION 4. 422.310 (1) (fg) of the statutes is created to read:
4	422.310 (1) (fg) The anticipated length of time within which the customer could
5	reasonably expect to receive a tax refund if the customer does not request a refund
6	anticipation loan and the income tax return is filed by mail.
7	SECTION 5. 422.310 (1) (fr) of the statutes is created to read:
8	422.310 (1) (fr) That the Internal Revenue Service and the department of
9	revenue do not guarantee that they will pay the full amount of an anticipated refund
10	and do not guarantee a specific date that a refund will be deposited into the
11	customer's financial institution account or mailed to the customer.
12	SECTION 6. 422.310 (1) (gm) of the statutes is created to read:
13	422.310 (1) (gm) That a refund anticipation loan is a loan and is not the
14	customer's actual income tax refund.
15	Section 7. 422.310 (1) (i) of the statutes is created to read:
16	422.310 (1) (i) The following statement: "If your refund anticipation loan is
17	approved, you will be responsible to pay \$ (creditor inserts amount disclosed under
18	par. (c)) in charges and fees for the loan, which we will automatically deduct. After
19	we deduct these charges and fees, you will receive approximately \$ (creditor
20	inserts amount)."
21	SECTION 8. 422.310 (1) (j) of the statutes is created to read:
22	422.310 (1) (j) That the customer has the right to rescind the refund

**Section 9.** 422.417 (3m) of the statutes is created to read:

anticipation loan transaction as provided in s. 422.423 (2).

422.417 (3m) With respect to a refund anticipation loan, a creditor may not take or arrange for taking a security interest in any property of the customer other than the proceeds of the customer's tax refund and the account into which that tax refund is deposited to secure payment of the loan.

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SECTION 10. 422.423 of the statutes is created to read:

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422.423 Refund anticipation loans. (1) A creditor who makes or arranges

a refund anticipation loan to or for a customer may not do any of the following:

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Misrepresent a material fact or condition of a refund anticipation loan. Fail to process an application for a refund anticipation loan promptly after

the customer applies for the loan.

for electronically filing atax

Offer or arrange for a refund anticipation loan that, including any charges or fees related to the loan at tax preparation, exceeds the amount of the customer's

13 anticipated tax refund. 422.605 Bescission.

A customer may rescind a refund anticipation loan, before the close of business on the next day of business after the loan is made, by either returning the original check issued for the loan or providing the amount of the loan in cash to the creditor who made or arranged for the loan. The creditor may not charge the customer any fee for rescinding the loan, except for a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive

the refund. 20

(3) A violation of this section is subject to s. 425.304

### Section 11. Initial applicability.

(1) This act first applies to refund anticipation loans, as defined in section 421.301 (37m) of the statutes, for which applications are received on the effective date of this subsection.

money order, or cashier's check

SECTION 12. Effective date.

2 (1) This act takes effect on the first day of the 4th month beginning after

3 publication.

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(END)

d-note

### 2009-2010 Drafting Insert FROM THE LEGISLATIVE REFERENCE BUREAU

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Additionally)
INSERT 1A:
The bill also requires disclosure of a chart indicating the estimated amount of time that a customer is expected to receive either a refund or loan for different filing and payment options, as well as for each loan program offered or arranged by the creditor. The chart must also indicate whether up front payment of a tax preparation fee is 🛪 required for each filing and payment option and each loan program?

**INSERT 2A:** 

The bill also incorporates into the statutes certain requirements under DFI's rules, including requirements regarding the timing of the disclosures, as well as the ./ manner for disclosing annual percentage interest rates of refund anticipation loans

**INSERT 2-1:** 

SECTION 1. 422.310 (title) of the statutes is repealed.

**SECTION 2.** 422.310 (1) of the statutes is renumbered 422.601 and 422.601 (intro.), (2), (3), (6) and (8), as renumbered, are amended to read:

422.601 Disclosures. (intro.) In addition to any other requirements under this subchapter subch. III, a creditor who makes or arranges a refund anticipation loan shall disclose all of the following in writing to a customer in type size no smaller than 10 point on a form that is signed by the customer before the customer enters into is asked to sign either an application containing an agreement for the refund anticipation loan, or, if there is no application, an agreement for the refund anticipation loan:

- (2) Any charge or fee for electronically filing an income tax return, including any charge or fee for checking tax return information, entering data for tax return information, or transmitting a tax return by computer modem.
- 17 (3) The total dollar amount of all charges and fees under pars. (a) subs. (1) and (b)(2)18



(6) The anticipated length of time, which may be no more than 14 days, within 1 2 which the customer could reasonably expect to receive a tax refund if the customer does not request a refund anticipation loan and the income tax return is filed 3 4 electronically and the customer does not request a refund anticipation loan. 5 (8) The estimated annual percentage rate, based on the size of the refund anticipation loan, the refund anticipation loan fees, and the anticipated maturity 6 date of the refund anticipation loan. The anticipated maturity date shall be the date 7 disclosed under par. (f) sub. (6). 8 History: 1993 a. 111. SECTION 3. 422.310 (2) of the statutes is renumbered 422.603 (4) and amended 9 10 to read: 422.603 (4) A creditor may not impose Impose a different fee or charge for 11 electronically filing an income tax return, including any fee or charge for checking 12 tax return information, entering data for tax return information, or transmitting a 13 tax return by computer modem, on a customer who obtains a refund anticipation loan 14 that is different than the fee or charge the creditor imposes on a customer who does 15 16 not obtain a refund anticipation loan. History: 1993 a. 111. SECTION 4. 422.310 (3) of the statutes is renumbered 422.606 and amended to 17 18 read: 422.606 <u>Violations</u>. A violation of this section subchapter is subject to s. 19 20 425.304. History: 1993 a. 111. SECTION 5. Subchapter VI of chapter 422 [precedes 422.601] of the statutes is 21 22 created to read: 23

SUBCHAPTER VI

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CHAPTER 422

### 1

### REFUND ANTICIPATION LOANS

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**422.601** (3m) The fee charged, if any, if the customer's refund anticipation loan is not approved.

4 (6e) 5

The anticipated length of time within which the customer could reasonably expect to receive a tax refund if the customer does not request a refund anticipation loan and the income tax return is filed by mail.

(6m) A chart titled "timeline" which shows all of the following:

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- (a) The estimated amount of time that the customer is expected to receive his or her tax refund for all of the following options:
- 1. The customer files a paper return and the Internal Revenue Service mails a refund check to the customer.
- 2. The customer files a paper return and the Internal Revenue Service directly deposits a refund check into the customer's account with a financial institution.
- 3. The customer electronically files a tax return and the Internal Revenue Service mails a refund check to the customer.
- 4. The customer electronically files a tax return and the Internal Revenue Service directly deposits a refund check into the customer's account with a financial institution.
- (b) The estimated amount of time that a customer is expected to receive a refund anticipation loan under each refund anticipation loan program that the creditor offers or arranges.
- (c) An indication whether the creditor requires up front payment of a tax preparation fee for each option and program disclosed under pars. (a) and (b).
- (6s) That the Internal Revenue Service and the department of revenue do not guarantee that they will pay the full amount of an anticipated refund and do not

	W 11
1	guarantee a specific date that a refund will be deposited into the customer's financial
2	institution account or mailed to the customer.
3	(7m) That a refund anticipation loan is a loan and is not the customer's actual
4	income tax refund.
5	(9) The following statement: "If your refund anticipation loan is approved, you
6	will be responsible to pay \$ (creditor inserts amount disclosed under par (c) in
7	charges and fees for the loan, which we will automatically deduct from your tax
8	refund. After we deduct these charges and fees, you will receive approximately \$
9	(creditor inserts amount)."
10	(10) That the customer has the right to rescind the refund anticipation loan
11	transaction as provided in s. 422.605.
12	422.602 Estimated annual percentage rate. (1) For the purpose of s.
13	422.601 (8), the requirement to disclose the estimated annual percentage rate shall
14	be fulfilled by doing one of the following:
15	(a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated
16	amount of the refund and the length of time disclosed under s. 422.601 (6).
17	(b) Distributing a chart titled "representative range of loan amounts" with
18	headings for total loan amount, amount financed, finance charge, estimated
19	payment period, and annual percentage rate. The representative loan amounts shall
20	be in \$300 increments starting with \$300 and ending with \$3,000 and represent the
21	anticipated refund amount.

(2) The disclosure required under s. 422.601 (8) shall be made in accordance with 12 CFR 226.18.

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LRB-2395/2ins MDK:...:..

(3) For the purpose of calculating the annual percentage rate at the time the loan is actually made, the disclosure shall be based upon the actual amount of the loan and the length of time disclosed under s. 422.601 (6).

422.603 Prohibitions.

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### **INSERT 4-13:**

422.604 Security interests. With respect to a refund anticipation loan, a creditor may not take or arrange for taking a security interest in any property of the customer other than the proceeds of the customer's tax refund and the account into which that tax refund is deposited to secure payment of the loan.

### DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

MDK:<sub>↑</sub>....

date

Rep. Nelson:

Please review this version to make sure it achieves your intent.

Note that you wanted me to incorporate s. DFI-WCA 1.356, Wis. Adm. Code, into proposed 5.422.601 (2) and 422.603 (4). That rule specifies that creditor includes a loan arranger. I don't think it is necessary to specifically refer to a loan arranger, as s. 421.301 (16) defines creditor to include "a merchant who regularly engages ... in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons."

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

E-mail: mark.kunkel@legis.wisconsin.gov

### DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2395/2dn MDK:jld:md

April 1, 2009

Rep. Nelson:

Please review this version to make sure it achieves your intent.

Note that you wanted me to incorporate s. DFI-WCA 1.356, Wis. Adm. Code, into proposed ss. 422.601 (2) and 422.603 (4). That rule specifies that creditor includes a loan arranger. I don't think it is necessary to specifically refer to a loan arranger, as s. 421.301 (16) defines creditor to include "a merchant who regularly engages ... in arranging for the extension of consumer credit by or procuring consumer credit from 3rd persons."

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

E-mail: mark.kunkel@legis.wisconsin.gov

### Kunkel, Mark

From:

Nerad, Ben

Sent:

Wednesday, April 08, 2009 1:42 PM

To:

Kunkel, Mark

Subject:

REFUND ANTICIPATION LOAN BILL

LRB.doc

Attachments:

REFUND ANTICIPATION LOAN BILL LRB.doc



REFUND CIPATION LOAN BI

ark -- attached are suggested changes from DFI on the RAL bill.

Thanks,

Ben

### REFUND ANTICIPATION LOAN BILL LRB-2395/2

- 1. Both 422.601 and 422.602 contain disclosure requirements. The only difference between the two sections is the timing of the disclosures. As a result, please:
  - A) (Pg 2 Line 4) Change title of 422.601 from "Disclosures" to "Advance Disclosures."
  - B) (Pg 5 Line 22) Change title of 422.602 from "Estimated Annual Percentage Rate" to "Disclosures."
- 2. Add a new subsection to 422.601 that reads, "Any fees for establishing an account with a financial institution to electronically receive the refund." (Note: this fee, which is mentioned in 422.605, is currently not required to be disclosed).
- 3. (Pg 6 Line 8) Revise 422.602(2) to read "The <u>loan</u> disclosure<u>s</u> required under s.422.601(8) shall be made in accordance with 12 CFR 226.18" (Note: this subsection refers to loan disclosures that are not advance disclosures, in other words they are not required by 422.601(8) therefore the reference to 422.601(8) should be deleted).
- 4. (Pg 5 Line 22 through Pg 6 Line 7) Make contents of 422.602(1) part of 422.601(8) (Note: disclosures required by 422.602(1) are the type that are advanced disclosures).
- 5. (Pg 4 Line 15 through Pg 5 Line 8) Most of the requirements in 422.601(6m) are required elsewhere; for example:
  - A) Disclosures required in 422.601(6m)(a)1 and 2 are also required by (6e).
  - B) Disclosures required in 422.601(6m)(a)3 and 4 are also required by (6).
  - C) Disclosures required in 422.601(6m)(b) are also required by 422.601(4).

Because the disclosures required by 422.601(6m) are more detailed, I suggest we keep the (6m) requirement but delete the others to eliminate the redundancy. If you do this, however, we should add the 14 day limit to 422.601(6m)(a)3 and 4.

P.P 422.301(1) (d) {(f)

### 12 CFR 226.18

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\*\*\* THIS SECTION IS CURRENT THROUGH THE APRIL 1, 2009 ISSUE OF \*\*\*

\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 12 -- BANKS AND BANKING
CHAPTER II -- FEDERAL RESERVE SYSTEM
SUBCHAPTER A -- BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
PART 226 -- TRUTH IN LENDING (REGULATION Z)
SUBPART C -- CLOSED-END CREDIT

### **Go to the CFR Archive Directory**

12 CFR 226.18

§ 226.18 Content of disclosures.

For each transaction, the creditor shall disclose the following information as applicable:

- (a) Creditor. The identity of the creditor making the disclosures.
- (b) Amount financed. The amount financed, using that term, and a brief description such as the amount of credit provided to you or on your behalf. The amount financed is calculated by:
- (1) Determining the principal loan amount or the cash price (subtracting any downpayment);
- (2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and
- (3) Subtracting any prepaid finance charge.
- (c) Itemization of amount financed. (1) A separate written itemization of the amount financed, including: n40
- n40 Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) may be substituted for the disclosures required by paragraph (c) of this section.
- (i) The amount of any proceeds distributed directly to the consumer.
- (ii) The amount credited to the consumer's account with the creditor.
- (iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons. n41
- n41 The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

- (iv) The prepaid finance charge.
- (2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.
- (d) Finance charge. The finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."
- (1) Mortgage loans. In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:
- (i) is understated by no more than \$ 100; or
- (ii) is greater than the amount required to be disclosed.
- (2) Other credit. In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of \$ 1,000 or less, it is not more than \$ 5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than \$ 1,000, it is not more than \$ 10 above or below the amount required to be disclosed.
- (e) Annual percentage rate. The annual percentage rate, using that term, and a brief description such as "the cost of your credit as a yearly rate." n42
- n42 For any transaction involving a finance charge of \$ 5 or less on an amount financed of \$ 75 or less, or a finance charge of \$ 7.50 or less on an amount financed of more than \$ 75, the creditor need not disclose the annual percentage rate.
- (f) Variable rate. (1) If the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures: n43
- n43 Information provided in accordance with §§ 226.18(f)(2) and 226.19(b) may be substituted for the disclosures required by paragraph (f)(1) of this section.
- (i) The circumstances under which the rate may increase.
- (ii) Any limitations on the increase.
- (iii) The effect of an increase.
- (iv) An example of the payment terms that would result from an increase.
- (2) If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures:
- (i) The fact that the transaction contains a variable-rate feature.
- (ii) A statement that variable-rate disclosures have been provided earlier.
- (g) Payment schedule. The number, amounts, and timing of payments scheduled to

repay the obligation.

- (1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.
- (2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:
- (i) The dollar amounts of the largest and smallest payments in the series.
- (ii) A reference to the variations in the other payments in the series.
- (h) Total of payments. The total of payments, using that term, and a descriptive explanation such as "the amount you will have paid when you have made all scheduled payments." n44
- n44 In any transaction involving a single payment, the creditor need not disclose the total of payments.
- (i) Demand feature. If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in  $\S 226.17(c)(5)$ , that fact shall also be disclosed.
- (j) Total sale price. In a credit sale, the total sale price, using that term, and a descriptive explanation (including the amount of any downpayment) such as "the total price of your purchase on credit, including your downpayment of \$ ----." The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.
- (k) Prepayment. (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.
- (2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full.
- (I) Late payment. Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.
- (m) Security interest. The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.
- (n) Insurance and debt cancellation. The items required by § 226.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.
- (o) Certain security interest charges. The disclosures required by § 226.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.
- (p) Contract reference. A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties.

At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

- (q) Assumption policy. In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.
- (r) Required deposit. If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. n45

n45 A required deposit need not include, for example: (1) An escrow account for items such as taxes, insurance or repairs; (2) a deposit that earns not less than 5 percent per year; or (3) payments under a Morris Plan.

#### **HISTORY:**

[46 FR 20892, Apr. 7, 1981; 46 FR 29246, June 1, 1981, as amended at 52 FR 48670, Dec. 24, 1987; 61 FR 49237, 49246, Sept. 19, 1996]

#### **AUTHORITY:**

AUTHORITY NOTE APPLICABLE TO ENTIRE PART: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).



State of Misconsin 2009 - 2010 LEGISLATURE

LRB-2395/2-MDK:jld/md

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gen cut  $\mathbf{AN}\ \mathbf{ACT}\ to\ repeal\ 422.310\ (title); to\ renumber\ and\ amend\ 422.310\ (1),\ 422.310$ 

(2) and 422.310 (3); and to create subchapter VI of chapter 422 [precedes

422.601] of the statutes; relating to: the regulation of income tax refund

anticipation loans. and providing a penalty

## Analysis by the Legislative Reference Bureau

Current law requires a creditor to make specified disclosures before a "refund anticipation loan" (RAL) is made to a customer. An RAL is defined as an agreement under which a creditor arranges to be repaid for a loan directly from the proceeds of a customer's income tax refund. Current law defines "creditor" to include a merchant who regularly engages in arranging an RAL for a customer, as well as the merchant who makes the RAL. The disclosure requirements are enforced by the Department of Financial Institutions (DFI).

This bill creates additional requirements, also enforced by DFI, for a creditor who makes or arranges an RAL. In addition to the disclosures required under current law, the bill requires a creditor to disclose the fee charged if an RAL is not approved. (The bill also requires disclosure of the anticipated length of time for receipt of a tax refund by a customer who files a return by mail and who does not request an RAL. Current law requires a similar disclosure regarding a return filed electronically. The bill also requires a creditor to disclose that: 1) the Internal Revenue Service and the Department of Revenue do not guarantee refunds; 2) an RAL is a loan and is not the customer's actual refund; and 3) a customer may rescind an RAL, as described below. Additionally, the bill requires disclosure of a chart

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Advance

indicating the estimated amount of time that a customer is expected to receive either a refund or loan for different filing and payment options, as well as for each loan program offered or arranged by the creditor. The chart must also indicate whether up-front payment of a tax preparation fee is required for each filing and payment option and each loan program. Also, the creditor must disclose how much of a refund a customer is expected to receive after charges and fees for the RAL are deducted from the customer's tax refund. Under the bill, the foregoing disclosures, as well as the disclosures required under current law, must be in a type size no smaller than 10 point. The bill also incorporates into the statutes certain requirements under DFI's rules, including requirements regarding the timing of the disclosures, as well as the manner for disclosing annual percentage interest rates of RALs.

The bill also allows a customer to rescind an RAL before the close of business on the next business day after the RAL is made. The bill provides that the only fee a creditor may charge a customer for rescinding an RAL is a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the customer's refund. The bill prohibits a creditor from doing any of the following: 1) misrepresenting a material fact of condition of an RAL; 2) failing to process promptly an RAL application; 3) offering or arranging an RAL in which the amount of the loan, including charges and fees related to the loan, tax preparation, or electronic filing, exceed the customer's anticipated refund; and 4) taking or arranging a security interest in any property other than the customer's tax refund.

The bill provides that a creditor who violates the bill is liable to a customer in amount equal to the greater of: 1) twice the finance charge imposed for the RAL; or 2) the actual damages sustained by the customer due to the violation. The amount under the first component of the foregoing formula is subject to a minimum of \$100 and a maximum of \$1,000. Current law creates similar liability for violations of the disclosures required under current law.

# The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 422.310 (title) of the statutes is repealed.

**SECTION 2.** 422.310 (1) of the statutes is renumbered 422.601 and 422.601

(intro.), (2), (3), (6) and (8), as renumbered, are amended to read:

422.601 **Disclosures.** (intro.) In addition to any other requirements under this subchapter subch. III, a creditor who makes or arranges a refund anticipation loan shall disclose all of the following in writing to a customer in type size no smaller than 10 point on a form that is signed by the customer before the customer enters into

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a is asked to sign either an application containing an agreement for the refund 1 anticipation loan, or, if there is no application, an agreement for the refund 2 anticipation loan: 3 .660) (2) Any charge or fee for electronically filing an income tax return, including 5 any charge or fee for checking tax return information, entering data for tax return information, or transmitting a tax return by computer modem. 6 (3) The total dollar amount of all charges and fees under pars. (a) subs. (1) and 7 NSERT (b) (2). 8 9 (6) The anticipated length of time, which may be no more than 14 days, within which the customer could reasonably expect to receive a tax refund if the customer 10 does not request a refund anticipation loan and the income tax return is filed 11 12 electronically and the customer does not request a refund anticipation loan. (8) The estimated annual percentage rate, based on the size of the refund 13 anticipation loan, the refund anticipation loan fees, and the anticipated maturity 82.601 date of the refund anticipation loan. The anticipated maturity date shall be the date 15 INSEPT 3-16 (16) disclosed under par. (f) sub. Section 3. 422.310 (2) of the statutes is renumbered 422.603 (4) and amended 17 18 to read: 19 422.603 (4) A creditor may not impose Impose a different fee or charge for 20 electronically filing an income tax return, including any fee or charge for checking tax return information, entering data for tax return information, or transmitting a 2122 tax return by computer modem, on a customer who obtains a refund anticipation loan 23that is different than the fee or charge the creditor imposes on a customer who does

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not obtain a refund anticipation loan.

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# BILL

1	SECTION 4. 422.310 (3) of the statutes is renumbered 422.606 and amended to
2	read:
3	422.606 <u>Violations.</u> A violation of this section subchapter is subject to s.
4	425.304.
5	SECTION 5. Subchapter VI of chapter 422 [precedes 422.601] of the statutes is
6	created to read:
7	CHAPTER 422
8	SUBCHAPTER VI
9	REFUND ANTICIPATION LOANS
10	422.601 (Sim) The fee charged, if any, if the customer's refund anticipation loan
11	is not approved.
12	(6e) The anticipated length of time within which the customer could
13	reasonably expect to receive a tax refund if the customer does not request a refund
14	anticipation loan and the income tax return is filed by mail.
<b>1</b> 5	(62) A chart titled "timeline" that shows all of the following:
16	(a) The estimated amount of time that the customer is expected to receive his
17	or her tax refund for all of the following options:
18	1. The customer files a paper return and the Internal Revenue Service mails
19	a refund check/to the customer.
20	2. The customer files a paper return and the Internal Revenue Service directly
21	deposits a refund check into the customer's account with a financial institution.
22	3. The customer electronically files a tax return and the Internal Revenue
23	Service mails a refund check to the customer. (INSEPT 4-23)

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- 4. The customer electronically files a tax return and the Internal Revenue Service directly deposits a refund check into the customer's account with a financial institution.
  - (b) The estimated amount of time that a customer is expected to receive a refund anticipation loan under each refund anticipation loan program that the creditor offers or arranges.
  - (c) An indication whether the creditor requires up-front payment of a tax preparation fee for each option and program disclosed under pars. (a) and (b).
  - That the Internal Revenue Service and the department of revenue do not guarantee that they will pay the full amount of an anticipated refund and do not guarantee a specific date that a refund will be deposited into the customer's financial institution account or mailed to the customer.
  - (7m) That a refund anticipation loan is a loan and is not the customer's actual income tax refund.
  - (9) The following statement: "If your refund anticipation loan is approved, you will be responsible to pay \$.... (creditor inserts amount disclosed under sub. (3)) in charges and fees for the loan, which we will automatically deduct from your tax refund. After we deduct these charges and fees, you will receive approximately \$.... (creditor inserts amount)."
  - (10) That the customer has the right to rescind the refund anticipation loan transaction as provided in s. 422.605.
- 422.602 Estimated annual percentage rate (1) For the purpose of s. 422.601 (8), the requirement to disclose the estimated annual percentage rate shall be fulfilled by doing one of the following:

Disclosures at loan consummation

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	BILL SECTION 5
1	(a) Calculating the rate pursuant to 12 CFR 226.17 (c) (2) for the anticipated
2	amount of the refund and the length of time disclosed under s. 422.601 (6).
3 /	(b) Distributing a chart titled "representative range of loan amounts" with
4	headings for total loan amount, amount financed, finance charge, estimated
5	payment period, and annual percentage rate. The representative loan amounts shall
6	be in \$300 increments starting with \$300 and ending with \$3,000 and represent the
7	anticipated refund amount.
8	The disclosure required under s. 422.601 (8) shall be made in accordance
9	with 12 CFR 226.18. 0 ( Same Pactitle ) INSEPT 6-8)

For the purpose of calculating the annual percentage rate at the time the loan is actually made, the disclosure shall be based upon the actual amount of the

loan and the length of time disclosed under s. 422.601 (6).

arranges a refund

- **422.603 Prohibitions.** A creditor who makes or arranges a refund anticipation loan to or for a customer may not do any of the following:
  - (1) Misrepresent a material fact or condition of a refund anticipation loan.
- (2) Fail to process an application for a refund anticipation loan promptly after the customer applies for the loan.
- (3) Offer or arrange for a refund anticipation loan that, including any charges or fees related to the loan, tax preparation, or electronically filing a tax return, exceeds the amount of the customer's anticipated tax refund.
- **422.604 Security interests.** With respect to a refund anticipation loan, a creditor may not take or arrange for taking a security interest in any property of the customer other than the proceeds of the customer's tax refund and the account into which that tax refund is deposited to secure payment of the loan.

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422.605 Recission. A customer may rescind a refund anticipation loan, before the close of business on the next day of business after the loan is made, by either returning the original check issued for the loan or providing the amount of the loan in cash, money order, or cashier's check to the creditor who made or arranged for the loan. The creditor may not charge the customer any fee for rescinding the loan, except for a fee equal to the administrative cost of establishing an account with a financial institution to electronically receive the refund.

#### SECTION 6. Initial applicability.

(1) This act first applies to refund anticipation loans, as defined in section 421.301 (37m) of the statutes, for which applications are received on the effective date of this subsection.

#### SECTION 7. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.

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(END)

D-note

### 2009-2010 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

1	INSERT 2A:
2	In addition, the bill incorporates into the statutes a DFI rule that requires a creditor to make certain disclosures that are required under federal law at the time that the creditor actually makes a loan.*  INSERT 3-3:
3	<b>SECTION 1.</b> 422.310 (1) (a) to (c) of the statutes are renumbered 422.601 (1) to
<b>4 5</b>	(3) and 422.601 (2) and (3), as renumbered, are amended to read:
6	SECTION 2. $422.310$ (1) (d) of the statutes is repealed.
7	<b>SECTION 3.</b> 422.310 (1) (e) of the statutes is renumbered 422.601 (5).
8	SECTION 4. 422.310 (1) (f) of the statutes is repealed.
9	<b>SECTION 5.</b> $422.310 (1) (g)$ of the statutes is renumbered $422.610 (7)$ .
10	SECTION 6. $422.310$ (1) (h) of the statutes is renumbered $422.601$ (8) (intro.) and
11	amended to read:
12	INSERT 3-16:
13	The requirement to disclose the estimated annual percentage rate shall be fulfilled
14	by doing one of the following:
15	INSERT 4-11:
16	(3r) Any fees for establishing an account with a financial institution to
17	electronically receive the refund.
18	INSERT 4-23:
19	The estimated amount of time under this subdivision may not exceed 14 days.
20	INSERT 5-3:
21	The estimated amount of time under this subdivision may not exceed 14 days.
22	INSERT 5-14:

**INSERT 5-14:** 

1	(8) (a) Calculating the rate pursuant to $12\mathrm{CFR}226.17\mathrm{(c)}(2)$ for the anticipated
2	amount of the refund and the length of time disclosed under sub. (6g) (a) 3.
3	(b) Distributing a chart titled "representative range of loan amounts" with
4	headings for total loan amount, amount financed, finance charge, estimated
5	payment period, and annual percentage rate. The representative loan amounts shall
6	be in \$300 increments starting with \$300 and ending with \$3,000 and represent the
7	anticipated refund amount.
8	INSERT 6-8:
9	At the time that a refund anticipation loan is actually made, a creditor shall make
10	the

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2395/3dn MDK:.∤.:... ∩√∩

Date

Rep. Nelson:

This version makes changes that were requested by DFI.

Note that one change is the elimination of proposed s. 422.601 (6), as that provision is redundant, because it requires disclosures that are also required under proposed s. 422.601 (6g) (a) 3, and 4. (formerly numbered s. 422.601 (6m) (a) 3, and 4. in the previous version). I had to change other provisions that refer to s. 422.601 (6), and I chose to replace those references with a reference to s. 422.601 (6g) a. 3., rather than to proposed s. 422.601 (6g) a. 4. Those references appear in proposed s. 422.601 (8) (intro.) and (a) and the last sentence of proposed s. 422.602. Is that okay?

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

E-mail: mark.kunkel@legis.wisconsin.gov

# DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-2395/3dn MDK:nwn:jf

April 9, 2009

Rep. Nelson:

This version makes changes that were requested by DFI.

Note that one change is the elimination of proposed s. 422.601 (6), as that provision is redundant, because it requires disclosures that are also required under proposed s. 422.601 (6g) (a) 3. and 4. (formerly numbered s. 422.601 (6m) (a) 3. and 4. in the previous version). I had to change other provisions that refer to s. 422.601 (6), and I chose to replace those references with a reference to s. 422.601 (6g) a. 3., rather than to proposed s. 422.601 (6g) a. 4. Those references appear in proposed s. 422.601 (8) (intro.) and (a) and the last sentence of proposed s. 422.602. Is that okay?

Mark D. Kunkel Senior Legislative Attorney Phone: (608) 266-0131

E-mail: mark.kunkel@legis.wisconsin.gov

### Parisi, Lori

From: Sent:

Nerad, Ben

To:

Subject:

Thursday, April 09, 2009 4:18 PM LRB.Legal Draft Review: LRB 09-2395/3 Topic: Regulation of tax refund anticipation loans

RUSH

Please Jacket LRB 09-2395/3 for the ASSEMBLY.